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April 4, 1977

No. 77/55

TO COUNTY ASSESSORS:

USE OF CHURCH PROPERTY BY NURSERY SCHOOLS,
PRESCHOOLS, AND PUBLIC SCHOOLS

Several counties have asked questions regarding the administration of the church and welfare exemptions where church premises are used for nursery, preschool and public school purposes. We have reviewed these questions with our legal staff and established the following guidelines.

(1) Nursery schools and preschools operated on church premises:

- A. As a general rule, if the church premises are used primarily for religious worship, then a supportive, noninterfering use of the premises by members of the congregation will not negate the applicability of the church exemption to the property. Thus, if members of the congregation operate a nursery or preschool in which members provide the child care and supervision on a volunteer basis for a nominal charge to cover the costs of snacks, supplies, janitorial services, etc., primarily for children of members and the operation is directly accountable to the local church authority, then this use should be regarded as merely incidental and, therefore, is within the contemplation of the church exemption.
- B. If professional child care personnel are employed, fees are charged for the instructional or supervisory services provided to member and/or nonmember children, and the school has obtained a written license or permit from the State Department of Social Welfare pursuant to Section 221, then the church must file for the welfare rather than the church exemption. If the owner and operator are separate entities, both should file for the welfare exemption.

The church need not file for both the church and the welfare exemption, since the latter exemption encompasses both religious and nursery school purposes.

The above interpretations are consistent with 57 Op. Cal. Atty. Gen. 119 (1974) and Church Exemption Handbook (AH 262) as approved by the Board on March 2, 1977.

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(2) Church property which is used during the day by public schools and at night and on weekends by the church:

The basic issue involved is whether these two uses of the property are within the contemplation of the welfare exemption. It is our opinion that the lease of property by an otherwise qualified welfare claimant to a public school district for school purposes does not abrogate the welfare exemption, provided, that the rental charges are nonprofit.—

In applying case and statutory law to the situation in which a church leases its property to a public school on a part-time basis, we find that such use of said property is for a charitable purpose for the following reasons:

- (1) The property is used for an educational purpose by a school of less than collegiate grade.
- (2) The standards established for schools of less than collegiate grade by Sections 214.4 and 214.5 are comparable to public school standards.
- (3) The burdens of government are lessened in that the public school may use the facilities at a cost below economic rent. Moreover, there is the requisite gift element in such a transaction to an unascertainable portion of the community; the character of the transaction is for the benefit of the public and not for private gain.

After determining that the activity of the owner church is leasing the property to a public school is charitable within the meaning of Section 214, the next issue which must be addressed is the status of the operator public school with respect to the requirements of Section 214 and following. Section 214 provides that property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation if the operational and organizational requirements of subdivision (1) through (7) are met. While it is true that public schools are not technically owned and operated by nonprofit community chests, funds, foundations, or corporations, the limitations imposed upon their operations as public entities are more stringent than those required by the welfare exemption. As such, public schools more than fulfill the qualifications as an operator.

In conclusion, the church (owner) is eligible for the welfare exemption on property used by the public school (operator). A lessors' exemption claim is not required to be filed by the church, however, a copy of the lease agreement should accompany the welfare claim. The issue of "property used exclusively for public schools" becomes moot, since the use by the public

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school has been determined to be "charitable" within the contemplation of the welfare exemption. It should be emphasized, however, that the foregoing interpretation is limited to use by public schools of "less than collegiate grade" since both Sections 214 and 214.5 contain the directive:

"This section shall not be construed to enlarge the college exemption."

If you have any questions regarding the above, please contact Bill Grommet, Vance Price, or Bill Minor; their phone number is (916) 445-4982.

Sincerely,

Jack F. Eisenlauer
Jack F. Eisenlauer, Chief
Assessment Standards Division

JFE:sk